

SCANNED

DATE: 11/15/07

BY: K.S.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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CLERK'S OFFICE
DISTRICT OF MASS.

BRANDON ASSOCIATES, LLC
Plaintiff

v.

FAILSAFE AIR SAFETY SYSTEMS
CORP., BLUE SAGE CONSULTING,
INC., ELCON MEDICAL,
DEBRA ESPE, ALAN FEUERSTEIN
Defendants

CIVIL ACTION

NO. 04 12013NMG

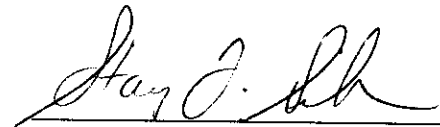
AFFIDAVIT OF STACY J. SILVEIRA IN SUPPORT OF PLAINTIFF'S RESPONSE
TO DEFENDANT FAILSAFE'S REQUEST FOR DEFAULT

I, Stacy J. Silveira, hereby depose and swear as follows:

1. I am an attorney in good standing in the Commonwealth of Massachusetts and am General Counsel for Brandon Associates, LLC ("Brandon"), the Plaintiff in the above-captioned matter.
2. I have personal knowledge of the facts contained herein, I am over the age of eighteen (18) years and I am competent to testify.
3. Brandon filed its original Verified Complaint and Action to Reach and Apply against FailSafe Air Safety Systems Corp. ("FailSafe") on September 8, 2004 in the Superior Court of the Commonwealth of Massachusetts.
4. On September 17, 2004, FailSafe removed the case to this Court on grounds of diversity jurisdiction.
5. On September 24, 2004, sixteen days after filing the original complaint and prior to the filing of an answer by FailSafe, Brandon amended its complaint as a matter of course pursuant to FED. R. CIV. P. 15(a).
6. On September 30, 2004, four days after Brandon filed the Amended Complaint, FailSafe filed an Answer and Counterclaim to the original complaint.

7. FailSafe has never filed an Answer to the Amended Complaint.
8. On October 28, 2004, in a telephone conversation, opposing counsel refused my request to assent to the filing of a Reply to the Counterclaim eight (8) days late. Opposing counsel did not inform me of her intention to file the Request for Default during this conversation.
9. On October 28, 2004, sometime after the above-mentioned conversation, FailSafe's Counsel filed the Request for Default for FailSafe's Counterclaim.
10. On October 29, 2004, Brandon filed its Motion for Leave to Reply to the Counterclaim eight (8) days late and Brandon's Reply to Counterclaim.

SIGNED UNDER PAINS AND PENALTIES OF PERJURY THIS 12TH DAY OF NOVEMBER, 2004.

A handwritten signature in black ink, appearing to read "Stacy J. Silveira", is written over a horizontal line.

Stacy J. Silveira, Esq.
BBO # 650675
General Counsel
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